

LISBETH SPILLER,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

This matter is before the Court pursuant to the Report and Recommendation of United States Magistrate Judge Audrey G. Fleissig, filed January 8, 2009. See 28 U.S.C. § 636(b). The Magistrate Judge recommended that the decision of the Commissioner denying plaintiff's application for supplemental security income benefits under Title XVI of the Social Security Act and application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401, et seq., be reversed and the case remanded for further development of the record.

The defendant filed objections to the recommendation, asserting that the Magistrate Judge erred in recommending remand of the case on the basis that the Administrative Law Judge (ALJ) relied on a report completed by a non-medical source in making his residual functional capacity (RFC) assessment. The defendant asserts that nothing in the record indicates that the ALJ relied on the non-medical report in making his own RFC assessment, and that all of the medical evidence before the ALJ supported his RFC finding that plaintiff could at least perform sedentary or light work. Defendant also discusses its perception of the general weakness of plaintiff's case, and observes that

the post-hearing letter submitted by Dr. Inman concerning plaintiff's claimed disability is conclusory and irrelevant because it does not related to the relevant time period.

After de novo review of the matter, the Court concurs with the recommendation of the Magistrate Judge for the reasons set forth in the thorough and well-reasoned Report and Recommendation. Assuming that the ALJ did not rely on the non-medical source in determining plaintiff's RFC, there was nonetheless no medical evidence in the record concerning plaintiff's functional abilities. Further, the Court recognizes, as did the Magistrate Judge, the limited value of Dr. Inman's letter and the other post-hearing evidence. Still, the Court agrees with the Magistrate Judge that the better course of action in this case, because of the lack of medical evidence supporting the RFC, is to reverse the ALJ's decision and remand for reconsideration by the ALJ and an explanation of the weight to be given the evidence submitted after the evidentiary hearing. Defendant's objections are considered and overruled.


Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge is **sustained, adopted and incorporated** herein. [Doc.17]

IT IS FURTHER ORDERED that the decision of the Commissioner denying plaintiff's application for supplemental security income benefits under Title XVI of the Social Security Act/ and application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401, et seq., is **REVERSED**.

IT IS FURTHER ORDERED that pursuant to sentence four of 42 U.S.C. § 405(g), this case is **REMANDED** to the Commissioner for further proceedings and development of the record consistent with the Report and Recommendation.

An appropriate judgment of remand will accompany this order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 6th day of February, 2009.